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[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 1209; Dec. Dig. § 379.* 13 Va.-W. Va. Enc. Dig. 966, et seq.]

3. Street Railroads (§ 81*)—Injuries to Travelers—Liability.—A traveler on a street on which a street car is operated may go on or near the track in passing a wagon standing near the curb, and the motorman must warn her of the approach of the car, where there is danger of running her down, and must slow down his car so as to avoid injuring her, if he can do so in the exercise of reasonable care after he ought to have seen her peril.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig. §§ 172-177; Dec. Dig. § 81.* 12 Va.-W. Va. Enc. Dig. 841.]

4. Trial (§ 260*)—Instructions.—Where, in an action for injuries to a bicycle rider struck by a street car, the evidence showed that the rider went on or near the track in passing a wagon standing near the curb, and the proof was conflicting whether the accident occurred before or after the car had passed the wagon, an instruction that the car had the right of way at the point at which the accident occurred, and that if the motorman was proceeding at a lawful rate of speed, and plaintiff was not approaching a place of obvious danger, the motorman owed no duty to slow down his car, covered both phases of the case and left the jury to determine at what point plaintiff was injured, rendering it proper to refuse instructions assuming that the accident did not occur until after the car had passed the wagon.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.* 7 Va.-W. Va. Enc. Dig. 730.]

5. Appeal and Error (§ 1003*)—Verdict—Conclusiveness.—A verdict contrary to the preponderance of the evidence, but supported by evidence, rendered on proper instructions, will not be disturbed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3938-3943; Dec. Dig. § 1003.* 1 Va.-W. Va. Enc. Dig. 620, et seq.]

Judgment affirmed. All the judges concur.

BROWN v. LYNCHBURG NAT. BANK.

June 10, 1909.

[64 S. E. 950.]

1. Banks and Banking (§ 151*)—Relation between Depositor and Bank—Obligation of Depositor.—A bank depositor must examine within a reasonable time and with ordinary care the account rendered in the passbook and the vouchers returned by the bank to him, and report any error discovered without unreasonable delay; and the examination need not be so minute as to exclude any possibility of error,

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

but it should be made in good faith and with ordinary diligence, and with such care as is required by the circumstances of the particular case.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 300, 301, 345; Dec. Dig. § 151.* 2 Va.-W. Va. Enc. Dig. 262; 265.]

2. Banks and Banking (§§ 119, 138*)—Relation of Bank to Depositor—Obligations of Bank.—A bank is the debtor of the depositor and must keep careful and faithful accounts with the depositor, scrutinize checks, and exercise proper care and skill to prevent or discover fraud.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 289, 398-404; Dec. Dig. §§ 119, 138.* 2 Va.-W. Va. Enc. Dig. 262.]

3. Banks and Banking (§ 112*)—Fraud of Bank Employee.—An employee of a bank in the perpetration of a fraud on a depositor is not the agent of the bank.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 271, 272; Dec. Dig. § 112.* 2 Va.-W. Va. Enc. Dig. 289, et seq.; 1 Id. 274.]

4. Banks and Banking (§ 154*)—Misconduct of Employee—Liability of Bank to Depositor.—Whether a bank was liable to a depositor for loss resulting from the fraud of employees of the bank in making false entries against the account of the depositor, notwithstanding his failure for about three years to discover the fraud, held, under the evidence, for the jury.

[Ed. Note.—For other cases, see Banks and Banking, Dec. Dig. § 154.* 2 Va.-W. Va. Enc. Dig. 262; 289, et seq.]

Judgment reversed. All the judges concur.

THOMPSON v. NORFOLK & P. TRACTION CO.

June 10, 1909.

[64 S. E. 953.]

1. Carriers (§§ 320, 347*)—Injuries to Passengers—Street Cars—Time to Alight—Negligence—Question for Jury.—In an action for injuries to a street car passenger as she was attempting to alight, whether defendant's alleged premature starting of the car before plaintiff had time to alight, or plaintiff's alleged negligence in attempting to alight before the car stopped, was the proximate cause of the accident, held for the jury.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. §§ 320, 347.* 12 Va.-W. Va. Enc. Dig. 851.]

2. New Trial (§ 72*)—Verdict—Vacation.—A verdict should not be

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.